

Filed for intro on 02/06/95  
Senate Bill \_\_\_\_\_  
By \_\_\_\_\_

House No. HB0712  
By Arriola, Jr.

AN ACT to amend Tennessee Code Annotated, Sections 63-6-204, and 225, relative to excluding certain employment and contractual arrangements from the definition of the "practice of medicine", and the prohibition on the unlawful division of fees by physicians, and to amend Section 68-11-205, relative to hospitals employing physicians.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

**SECTION 1.** Tennessee Code Annotated, Section 63-6-201, is amended by adding the following language:

Notwithstanding the provisions of this section, nothing herein shall prohibit a Hospital licensed under Title 68, Chapter 11, from employing a physician or surgeon licensed under this part. In the event a physician or surgeon enters such an employment arrangement, however, the hospital or other employing entity shall be prohibited from controlling, limiting, or otherwise delegating to another person, any or all patient treatment decisions, including any and all patient testing and referral decisions, which fall within the medical judgment of the physician employee. Further, physicians are prohibited from executing employment agreements that contain noncompetition clauses restricting their ability to practice medicine in specific geographic areas or for determinate lengths of time or both. The General Assembly finds that such clauses are

anticompetitive and not in the public interest. The Board of Medical Examiners shall promulgate regulations to ensure that the ethical constraints contemplated under this section are, in fact, carried out and followed by such employers in their employment of physicians.

**SECTION 2.** Tennessee Code Annotated, Section 63-6-201, is amended by adding the following language as a new appropriately designated subsection:

Since the physician-patient relationship forms the foundation for good medical care and the control of the physician's medical judgment or treatment care choices must remain inviolate and solely with the physician, corporate employers must be constrained from attempting to circumvent or otherwise dictate to licensed physicians in Tennessee the proper course of a patient's medical care and treatment. A corporate employer's abrupt termination of its contractual relationship with a physician for reasons related to a disagreement with the physician over the proper course of patient treatment or for other reasons which violate medical ethics, may result in physical and mental harm to patients. Therefore, in order to protect the public's health, safety, and welfare, it is necessary to ensure that physicians and their patients are protected and insulated from arbitrary treatment or contractual decisions made by persons and entities who are not part of the immediate physician-patient relationship, but who maintain a contractual relationship with the physician.

**SECTION 3.** Tennessee Code Annotated, Section 63-6-201, is amended by adding the following language as a new appropriately designated subsection:

The General Assembly declares it to be the public policy of Tennessee that, in repealing the corporate practice of medicine doctrine in this state, the following ethical restrictions be promulgated in regulatory form by the Board of Medical Examiners in order to protect the health, safety, and welfare of all Tennessee citizens:

1. To prohibit and preclude physicians from entering into contractual arrangements in which their patient treatment decisions or professional judgment or both are delegated to or

otherwise controlled or influenced by a corporate employer, whether an individual or an entity, with whom they have contracted to provide patient care services;

2. To deem it to be unethical, and the illegal practice of medicine, for any individual or entity which contracts with or employs a physician to dictate or otherwise control the physician's treatment choices or professional judgment concerning patient care; and,

3. To ensure that patients are provided with high quality health care which is unfettered by an employing entities' nonprofessional, nonmedical judgment as to the propriety of various medical treatment deemed necessary and advisable by the physician-employee, or physician under such contractual arrangement.

**SECTION 4.** Tennessee Code Annotated, Section 63-6-225, is amended by adding the following language at the end of subsection (a):

provided, however, compensation to physicians and surgeons pursuant to employment agreements with hospitals licensed under Title 68, Chapter 11, and the assignment of professional fees to such hospitals under such arrangements shall not be deemed to be an unlawful division of fees under this part. In order to protect the public's health, welfare, and safety, such employment, compensation, or other contractual arrangements shall expressly reserve and delegate to the physician or surgeon employee the sole right and responsibility to independently exercise his or her professional medical judgment in the rendering, provision, and oversight of services, care, treatment to, and referral of, patients.

**SECTION 5.** Tennessee Code Annotated, Section 68-11-205, is amended by adding the following language:

; provided, however, nothing herein shall prohibit a hospital licensed under this part from employing a physician or surgeon. In any event, and in order to protect the public health, safety, and welfare, such contractual arrangements shall expressly provide that the hospital or entity employing or contracting with the physician or surgeon employee shall have no right of control or direction over the professional medical or clinical judgment of the physician or surgeon,

including without limitation all types of treatment and referral decisions made by the licensed physician. Entities licensed under Title 68 are prohibited from executing physician employment agreements that contain noncompetition clauses that restrict a physician's right or ability to practice medicine in specific geographic areas or for determinate lengths of time or both. The General Assembly finds that such clauses are anticompetitive and not in the public interest. It shall be strictly prohibited for any person, corporation, organization, or other entity to terminate, or to attempt to terminate, any contract or other such arrangement (as is contemplated herein) with any individual licensed under § 63-6-201(a), as a result of such individuals' failure or refusal, in the exercise of the individual's professional medical judgment, to follow the contracting or employing person's or entity's directions or orders, which go against such individual's professional medical judgment, and which concern to whom a patient may be referred. In the event such a termination occurs, the physician shall have a cause of action against the contracting or employing person or entity for retaliatory discharge as provided for in T.C.A. § 50-1-304. In bringing such an action, the aggrieved physician, if he or she prevails in the litigation, shall be entitled to collect, as part of the judgment against the defendant employer, the costs of litigation and a reasonable attorneys fee. Specifically, the attempt to, or the act of controlling, a physician's referral or other professional treatment decisions concerning a patient's health care, shall be considered an "illegal activity" as that phrase is defined under T.C.A. § 50-1-304(b) or its successor statute, and shall also be deemed to be a violation of T.C.A. § 63-6-201(a). Any such violation also shall be considered a violation of T.C.A. § 68-11-205 and subject the entity to revocation of licensure along with the penalties set forth in T.C.A. § 63-6-203. Any person, corporation, organization or other entity employing or contracting with an individual licensed to practice medicine or surgery in compliance with this subsection shall (1) be deemed a "similar entity" under § 63-6-219(a) and shall be subject to and receive the protections of § 63-6-219, and (2) shall hold in confidence and shall not disclose any data or information pertaining to diagnosis, treatment or health of any patient obtained from such

patient or any individual licensed to practice medicine or surgery except upon the express request or consent of the patient or when such data or information is required to be disclosed by the authority of another statute. Additionally, no person, corporation, organization or other entity employing or contracting with an individual licensed to practice medicine or surgery, shall undertake peer review of such licensed individuals, or conduct quality of care review, unless such employing or contracting person either is licensed under Title 63, Chapter 6 or uses an individual so licensed to conduct the review. In no event shall the authority and responsibility for conducting peer review, including quality assurance review of patient medical care, be delegated by an employing or contracting person or entity to any individual not licensed under Title 63, Chapter 6. At all times in this contracting context, peer review and quality assurance review shall remain within the sole purview of physicians licensed under Title 63, Chapter 6.

**SECTION 6.** If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

**SECTION 7.** This Act shall take effect on becoming a law, the public welfare requiring it.